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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

GONZALO ESTRADA; AURELIA
MARTINEZ, on behalf of themselves and
all individuals similarly situated,

Plaintiffs,

v.

BASHAS', INC.,

Defendant.

No. CV-02-00591-PHX-DJH

**ORDER AWARDING ATTORNEYS'
FEES AND COSTS**

Having reviewed Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees and Costs, the accompanying Memorandum of Points and Authorities, the declarations of Elizabeth A. Lawrence, Jocelyn D. Larkin, and Kathryn Honecker, and the arguments of counsel, and Defendant's counsel having advised the Court during the Fairness Hearing that Defendant has no objections to this Order, the Court now FINDS, CONCLUDES, and ORDERS as follows:

1. Notice of the requested award of attorneys' fees and costs was directed to Class Members in a reasonable manner, in compliance with Rule 23(h)(1) of the Federal Rules of Civil Procedure.

2. Class Members and any party from whom payment is sought have been given the opportunity to object in compliance with Federal Rule of Civil Procedure 23(h)(2).

3. No class member has objected to the requested fees and expenses.

1 4. Plaintiffs are eligible for and entitled to a fee award. *See* 42 U.S.C. §
2 1988(b); 42 U.S.C. § 2000e-5(k); Fed. R. Civ. P. 23(h); *Prison Legal News v.*
3 *Schwarzenegger*, 608 F.3d 446, 451 (9th Cir. 2010) (explaining that Plaintiffs qualify as a
4 “prevailing party” for purposes of awarding attorneys’ fees if they have obtained “a
5 legally enforceable settlement agreement”).

6 5. The “percentage of the fund” method of calculating fees is appropriate in
7 this common fund case, since “the benefit to the class is easily quantified.” *In re Apollo*
8 *Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *6 (D. Ariz. Apr. 20, 2012), *appeal dismissed*
9 (Oct. 10, 2012) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
10 (9th Cir. 2011)); *see also In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
11 1291, 1296 (9th Cir. 1994) (giving district courts the discretion to choose between the
12 lodestar and percentage methods of calculating fees in common fund cases).

13 6. Plaintiffs request a fee award of 25 percent of the common fund, which is
14 the “benchmark” fee award in common fund cases in the Ninth Circuit. *In re Pac.*
15 *Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). Having considered “all of the
16 circumstances of the case,” the court concludes that a fee award of 25 percent of the
17 common fund is appropriate in this case. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
18 1043, 1048 (9th Cir. 2002). Plaintiffs have not requested that the court award a higher
19 percentage. The court will not award a lower percentage because the relevant
20 circumstances all show that Plaintiffs’ request is reasonable. *See id.* at 1048-50; L.R.
21 Civ. 54.2(c)(3).

22 7. First, Class Counsel achieved excellent results for the class. Class Counsel
23 successfully appealed the district court’s denial of class certification, and on remand, they
24 obtained class certification under the challenging standard set forth in *Wal-Mart Stores,*
25 *Inc. v. Dukes*, 131 S. Ct. 2541 (2011). Counsel also negotiated and obtained a settlement
26 fund that represents a high percentage of class losses, even after subtracting the proposed
27 fees, costs, service awards, and administrative expenses. *See, e.g., de Mira v. Heartland*
28 *Employment Serv., LLC*, 2014 WL 1026282, at *2 (N.D. Cal. Mar. 13, 2014).

1 8. Second, Class Counsel succeeded in the face of enormous risks, including a
2 risky appeal to the Ninth Circuit and the risk of non-payment posed by Defendant's
3 bankruptcy proceedings mid-way through the litigation. *See Parra v. Bashas', Inc.*, 536
4 F.3d 975, 979 n.3 (9th Cir. 2008); *Covillo v. Specialtys Café*, 2014 WL 954516, at *6
5 (N.D. Cal. Mar. 6, 2014).

6 9. Third, Class Counsel demonstrated exceptional skill and quality of work,
7 drawing on decades of civil rights class action experience to succeed on appeal and to
8 obtain a successful settlement. *See, e.g., de Mira*, 2014 WL 1026282, at *3.

9 10. Fourth, Class Counsel took on an enormous financial burden by litigating
10 this case for more than a decade without payment, and with the understanding that they
11 would not be paid at all if Plaintiffs lost. This court has recognized that the duration of
12 this lawsuit was "not due to the failure of plaintiffs' counsel to vigorously prosecute this
13 action." *Parra v. Bashas', Inc.*, 291 F.R.D. 360, 389 (D. Ariz. 2013) *amended in part*
14 *sub nom. Estrada v. Bashas' Inc.*, 2014 WL 1319189 (D. Ariz. Apr. 1, 2014). As a result
15 of the time and resources that Class Counsel invested in this case, they were unable to
16 take on cases they would have otherwise pursued. *See, e.g., Craft v. Cnty. of San*
17 *Bernardino*, 624 F. Supp. 2d 1113, 1120 (C.D. Cal. 2008).

18 11. Fifth, Plaintiffs' request for 25 percent of the common fund falls squarely
19 within the range of acceptable awards for common fund cases in the Ninth Circuit. *See,*
20 *e.g., In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7; *see also Barbosa v.*
21 *Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013); *Vedachalam v. Tata*
22 *Consultancy Servs., Ltd.*, 2013 WL 3941319, at *2 & n.1 (N.D. Cal. July 18, 2013).

23 12. The court has conducted a lodestar cross-check to ensure that Plaintiffs' fee
24 request is reasonable. *See In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7;
25 *Covillo*, 2014 WL 954516, at *6 (explaining that when used as a cross-check, rather than
26 a primary method of setting fees, the lodestar calculation does not require "mathematical
27 precision" (internal quotation marks omitted)).

28 13. The number of hours that Class Counsel spent on this case was reasonable
in light of the length and complexity of the litigation and the excellent result obtained.

1 Class Counsel have eliminated hours spent on the working conditions claim, which was
2 decertified by this Court. Class Counsel have also eliminated hours spent on air travel, as
3 required by L.R. Civ. 54.2(e)(2)(D). Class Counsel have further reasonably accounted
4 for and eliminated excessive, unnecessary or duplicative hours.

5 14. Because Class Counsel have assigned themselves rates based on the
6 Phoenix legal market, which are lower than rates in the San Francisco legal market, this
7 Court need not decide if San Francisco or Phoenix rates are appropriate for calculating
8 the lodestar cross-check in this case. *Compare Gates v. Deukmejian*, 987 F.2d 1392,
9 1404-05 (9th Cir. 1992) *with Prison Legal News*, 608 F.3d at 454.

10 15. The rates that Class Counsel used to calculate the lodestar cross-check are
11 reasonable, and are in line with attorneys of comparable skill, experience, and reputation
12 who practice in this district. This conclusion is supported by the Declarations of Jocelyn
13 D. Larkin, Elizabeth A. Lawrence, and Kathryn Honecker.

14 16. The use of current rates to calculate the lodestar cross-check is appropriate
15 here because of the very significant delay in payment. *Missouri v. Jenkins by Agyei*, 491
16 U.S. 274, 284 (1989).

17 17. The lodestar cross-check results in a fee award that is higher than the fee
18 award Plaintiffs request. The requested fee award therefore “results in a so-called
19 negative multiplier, suggesting that the percentage of the fund is reasonable and fair.”
20 *Covillo*, 2014 WL 954516, at *7.

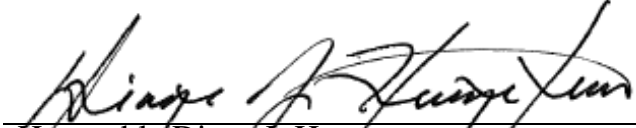
21 18. Class Counsel are entitled to recover their costs. 42 U.S.C. § 1988(b); 42
22 U.S.C. § 2000e-5(k); Fed. R. Civ. P. 23(h). The costs and expenses incurred by Class
23 Counsel are reasonable and are the type that would normally be charged by an attorney to
24 a fee-paying client. *See Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580-81 (9th
25 Cir. 2010).

26 19. The total award of \$1,625,000 for attorneys’ fees and \$178,761.26 for costs
27 is fair and reasonable.

28 Accordingly, **IT IS HEREBY ORDERED** as follows:

1 Class Counsel are hereby awarded: (1) attorneys' fees in the amount of
2 \$1,625,000; and (2) costs in the amount of \$178,761.26. Class Counsel will direct the
3 Class Administrator to pay these amounts from the Qualified Settlement Fund thirty days
4 after this Court's order on Final Approval of the settlement.

5 **Dated** this 23rd day of April, 2015.

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9 Honorable Diane J. Humetewa
United States District Judge

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